

EXHIBIT 23

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CORY SPENCER, ET AL.,)
)
)
PLAINTIFFS,)
)
V.) CV 16-2129-SJO (RAO)
)
) LOS ANGELES, CALIFORNIA
LUNADA BAY BOYS, ET AL.,)
)
) JULY 26, 2017
) (3:03 P.M. TO 3:45 P.M.)
DEFENDANTS.)
_____)

TELEPHONIC HEARING

BEFORE THE HONORABLE ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE
COURT REPORTER: RECORDED: COURTSMART
COURTROOM DEPUTY: SANDRA BUTLER
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

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APPEARANCES: (CONTINUED)
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I N D E X

CV 16-2129-SJO(RAO)

JULY 26, 2017

PROCEEDINGS: TELEPHONIC HEARING RE DISCOVERY DISPUTE BETWEEN
PLAINTIFFS AND DEFENDANTS FRANK FERRARA AND
CHARLIE FERRARA; SETTING BRIEFING SCHEDULE FOR
MOTION FOR SANCTIONS

1 LOS ANGELES, CALIFORNIA; JULY 26, 2017; 3:03 P.M.

2 THE CLERK: THIS COURT IS NOW IN SESSION.

3 THE HONORABLE ROZELLA A. OLIVER, UNITED STATES
4 MAGISTRATE JUDGE, PRESIDING.

5 CALLING CASE NUMBER CV 16-2129, SPENCER VERSUS LUNADA
6 BAY BOYS.

7 COUNSEL, PLEASE ENTER YOUR APPEARANCE FOR THE RECORD.

8 MS. WOLFF: GOOD AFTERNOON, YOUR HONOR.

9 THIS IS SAMANTHA WOLFF FOR THE PLAINTIFFS.

10 MR. OTTEN: GOOD AFTERNOON, YOUR HONOR.

11 VIC OTTEN FOR PLAINTIFFS.

12 MS. BACON: GOOD AFTERNOON, YOUR HONOR.

13 TIFFANY BACON FOR DEFENDANTS FRANK FERRARA AND
14 CHARLIE FERRARA.

15 MR. FIELDS: MARK FIELDS FOR DEFENDANTS ANGELO
16 FERRARA AND N.F.

17 MS. LUTZ: TERA LUTZ FOR DEFENDANT SANG LEE.

18 MR. SONG: JACOB SONG FOR THE CITY OF PALOS VERDES
19 ESTATES AND CHIEF KEPLEY.

20 THE COURT: ALL RIGHT. GOOD AFTERNOON, EVERYBODY.

21 WE'RE HERE TODAY TO DISCUSS THE PENDING DISCOVERY
22 DISPUTE BETWEEN THE PLAINTIFFS AND I BELIEVE CHARLIE AND FRANK
23 FERRARA.

24 IS THAT CORRECT, MS. WOLFF?

25 MS. WOLFF: CORRECT.

1 THE COURT: ALL RIGHT.

2 MS. WOLFF, WHY DON'T YOU BEGIN.

3 MS. WOLFF: THANK YOU, YOUR HONOR.

4 SO, AS YOU KNOW, THIS COURT ORDERED CHARLIE AND FRANK
5 FERRARA TO PRODUCE RESPONSIVE DOCUMENTS FROM THEIR CELL PHONE
6 IMAGING AND THEIR CELL PHONE BILLS BY 5:00 P.M. ON JULY 17TH,
7 WHICH WAS LAST MONDAY.

8 WE RECEIVED A PARTIAL PRODUCTION SHORTLY AFTER 5:00
9 ON MONDAY, THE 17TH, AND, THEN, AN ADDITIONAL PRODUCTION AFTER
10 5:00 P.M. FOUR DAYS LATER ON FRIDAY THE 21ST.

11 AND ASIDE FROM THE FACT THAT THAT FAILED TO MEET THE
12 COURT'S DEADLINE AND, PARTICULARLY, WITH RESPECT TO THE SECOND
13 PRODUCTION, THERE ARE SEVERAL SERIOUS ISSUES WITH RESPECT TO
14 THESE PRODUCTIONS.

15 FIRST IS THAT BOTH PRODUCTIONS ARE HEAVILY REDACTED.
16 AND I WOULD ESTIMATE THAT 90 PERCENT OF THE PRODUCTIONS ARE
17 EITHER FULLY OR PARTIALLY REDACTED. THERE'S NO LOG OR ANY WAY
18 FOR US TO CONFIRM THAT THE REDACTIONS ARE APPROPRIATE.

19 AND BY WAY OF REMINDER, THERE'S NO BASIS FOR
20 ASSERTING ANY PRIVILEGE BECAUSE PRIVILEGE WAS NOT CLAIMED AT
21 THE TIME EITHER DEFENDANT SUBMITTED HIS RESPONSES TO THE
22 DISCOVERY REQUESTS.

23 THE SECOND ISSUE IS THAT THE PRODUCTION ONLY CONTAINS
24 CELL PHONE BILLS FROM FEBRUARY 21ST, 2016 TO THE PRESENT. AND
25 THE REQUEST SOUGHT THE CELL PHONE BILLS FROM JANUARY 1, 2013 TO

1 PRESENT. SO, WE ARE MISSING OVER THREE YEARS' WORTH OF BILLS.

2 I UNDERSTAND FROM PRIOR CONVERSATIONS WITH MS. BACON
3 THAT THE DEFENDANTS CAN ONLY OBTAIN 18 MONTHS' WORTH OF CELL
4 PHONE BILLS ON LINE. BUT HAD THEY STARTED THIS PROCESS WHEN
5 THEY RECEIVED THE DISCOVERY REQUESTS BACK IN NOVEMBER, WE WOULD
6 LIKELY HAVE AT LEAST EIGHT ADDITIONAL MONTHS' WORTH.

7 BUT MORE THAN THAT, I'M NOT AWARE THAT THEY'RE REALLY
8 MAKING ANY EFFORT TO OBTAIN THESE BILLS ANY OTHER WAY. WHEN I
9 ASKED CHARLIE FERRARA AT HIS DEPOSITION WHAT EFFORTS HE'S MADE
10 TO OBTAIN THESE BILLS FROM HIS CELL PHONE CARRIER, HE SAID, AND
11 I QUOTE, I HAVEN'T REALLY TRIED THAT HARD HONESTLY.

12 THE THIRD ISSUE IS THAT SANG LEE'S PRIVILEGE LOG
13 REFERENCES TEXT COMMUNICATIONS THAT HE HAD WITH FRANK AND/OR
14 CHARLIE FERRARA FROM APPROXIMATELY MARCH 2016 THROUGH JULY
15 2016. BUT THESE PRODUCTIONS THAT WE RECEIVED DO NOT INCLUDE
16 ANY OF THESE TEXT MESSAGES. AND I DON'T KNOW IF OR WHEN THESE
17 TEXTS WERE DELETED OR IF THEY WERE REDACTED OR WHAT HAPPENED.
18 I SIMPLY CAN'T TELL FROM THIS PRODUCTION.

19 AND THE FOURTH ISSUE, WHICH IS A SIGNIFICANT ONE, IS
20 THAT THE PRODUCTION DOESN'T CONTAIN ANY OF CHARLIE FERRARA'S
21 CELL PHONE DATA, INCLUDING HIS TEXT MESSAGES.

22 I SPOKE WITH COUNSEL -- WITH MS. BACON ON MONDAY, THE
23 24TH, AND SHE STATED THAT THE EXTRACTION REPORT FOR CHARLIE
24 FERRARA'S CELL PHONE WAS MASSIVE, AND THAT IT WOULD TAKE A LOT
25 OF TIME TO GO THROUGH IT. SO, IT HASN'T BEEN PRODUCED.

1 AND THIS IS SIMPLY UNACCEPTABLE. WE WERE SUPPOSED TO
2 HAVE THIS INFORMATION OVER A WEEK AND A HALF AGO.

3 AND, THEN, WE RECEIVED CHARLIE AND FRANK'S SUMMARY
4 JUDGMENT MOTIONS ON MONDAY EVENING. AND IN THE MOTIONS THAT
5 THEY EACH FILED THEY BOTH ARGUE, FOR INSTANCE, THAT PLAINTIFFS
6 CAN PROFFER NO ADMISSIBLE EVIDENCE THAT CHARLIE FERRARA OR
7 FRANK FERRARA, AS IS THE CASE IN HIS MOTION, WAS INVOLVED IN
8 ANY ACTION OR INACTION UNDERTAKEN BY THE PURPORTED SURF GANG OR
9 ANY OTHER ACT OR OMISSION CAPABLE OF SUPPORTING JUDGMENT IN
10 FAVOR OF ANY PLAINTIFF.

11 THERE'S EVEN A HEADING IN THEIR MSJS THAT DISCOVERY
12 DEMONSTRATES AN UTTER DEARTH OF EVIDENCE SUPPORTING PLAINTIFFS'
13 CLAIMS.

14 AND THEY ALSO ARGUE THAT CHARLIE AND SANG LEE HAVE
15 COMMUNICATED ON SEVERAL OCCASIONS, BUT THAT BOTH OF THESE
16 DEFENDANTS CLAIM THAT THOSE COMMUNICATIONS WERE UNRELATED TO
17 THE CLAIMS ALLEGED IN THIS CASE. AND THAT THE PLAINTIFFS HAVE
18 NO EVIDENCE TO THE CONTRARY.

19 SO, THE PREJUDICE HERE IS OVERWHELMING. THESE
20 DEFENDANTS HAVE SPOILIATED EVIDENCE, WHETHER IT'S INTENTIONAL OR
21 NEGLIGENT.

22 AND IT WOULD ALSO APPEAR THAT THEY'RE NOW
23 INTENTIONALLY WITHHOLDING EVIDENCE. GIVEN THE TIMING OF THEIR
24 WITHHOLDING, AND IN LIGHT OF THE SUMMARY JUDGMENT ARGUMENTS,
25 IT'S GAMESMANSHIP. EVEN IF THEY WERE ORDERED TO PRODUCE

1 EVERYTHING TODAY, AND I DON'T EVEN KNOW THAT THEY COULD MEET
2 THAT DEADLINE, WE WOULD STILL BE SEVERELY DISADVANTAGED IN
3 HAVING TO REVIEW THOUSANDS OF PAGES OF DOCUMENTS AND OPPOSE
4 THEIR MOTIONS AND THE MOTIONS OF THEIR SIX CODEFENDANTS WITH
5 VERY LITTLE TIME.

6 THIS IS NEW TERRITORY FOR ME IN MY TEN-PLUS YEARS OF
7 PRACTICE. I'VE NEVER FOUND MYSELF DEALING WITH NEGLIGENT OR
8 INTENTIONAL SPOILIATION OR WITHHOLDING OF EVIDENCE. AND I'M
9 TRYING TO DETERMINE WHAT SANCTIONS OR REMEDIES ARE APPROPRIATE
10 HERE AND WHAT I SHOULD BE ASKING FOR HONESTLY BUT, AT THE VERY
11 LEAST, IT WOULD SEEM AN ADVERSE INFERENCE INSTRUCTION THAT
12 THESE DEFENDANTS WERE INVOLVED IN THIS CONSPIRACY TO COMMIT THE
13 ACTS IN VIOLATIONS THAT WE'VE ALLEGED IN THE COMPLAINT OR,
14 PERHAPS, EVEN STRIKING THEIR MOTIONS FOR SUMMARY JUDGMENT. AND
15 SANCTIONS IN THE FORM OF REIMBURSEMENT FOR PLAINTIFFS'
16 COUNSEL'S TIME IN DEALING WITH THESE ISSUES ALSO WOULD SEEM
17 APPROPRIATE UNDER THE FEDERAL RULES.

18 SO, I GUESS I'M LOOKING TO YOU FOR GUIDANCE HERE AS
19 TO HOW TO BEST REMEDY THIS SITUATION AND HOW WE CAN LEVEL THE
20 PLAYING FIELD AS IT WERE.

21 THE COURT: ALL RIGHT.

22 MS. BACON, DO YOU WANT TO RESPOND TO WHAT MS. WOLFF
23 HAS LAID OUT.

24 I LIKE THE WAY THAT SHE STRUCTURED IT, THE FOUR
25 POINTS -- THE HEAVY REDACTION, PRODUCTION INCOMPLETE, HOW

1 THERE'S NOT A LINING UP WITH WHAT WAS CONTAINED IN DEFENDANT
2 LEE'S PRIVILEGE LOG AND, THEN, FINALLY, THE PRODUCTION NOT
3 INCLUDING THE EXTRACTION REPORT FOR CHARLIE FERRARA.

4 MS. BACON: YES, YOUR HONOR. I WILL ADDRESS ALL OF
5 THOSE POINTS.

6 FIRST, WITH RESPECT TO CHARLIE FERRARA, MS. WOLFF IS
7 RIGHT, THAT THE EXTRACTION REPORTS ARE SUBSTANTIALLY LONG.
8 FRANK FERRARA'S EXTRACTION REPORT IS OVER 2,400 PAGES. AND
9 CHARLIE FERRARA'S EXTRACTION REPORT IS OVER 800 PAGES.

10 PURSUANT TO THE COURT'S ORDER TO PRODUCE RESPONSIVE
11 DOCUMENTS BY THAT MONDAY, WE ABSOLUTELY DID PRODUCE RESPONSIVE
12 DOCUMENTS INCLUDING ALL OF THE CELL PHONE RECORDS THAT WE WERE
13 ABLE TO OBTAIN.

14 IN ADDITION TO THAT, MY CLIENTS HAVE MADE SEVERAL
15 EFFORTS IN ORDER TO OBTAIN OTHER CELL PHONE RECORDS AND HAS
16 SIMPLY NOT BEEN GIVEN THE RECORDS BY THEIR CELL PHONE
17 COMPANIES.

18 AND MY CLIENTS ARE WILLING TO SIGN A DECLARATION TO
19 THAT FACT REGARDING ALL THE EFFORTS THEY HAVE MADE TO OBTAIN
20 THOSE RECORDS.

21 IN TERMS OF THE REDACTIONS THAT HAVE BEEN MADE,
22 REDACTIONS WERE MADE FOR THE PURPOSE OF PRODUCING RESPONSIVE
23 INFORMATION. THERE HAS BEEN NO PRIVILEGED INFORMATION THAT HAS
24 BEEN REDACTED. IT'S ONLY INFORMATION THAT IS SIMPLY NOT
25 RESPONSIVE TO THE DISCOVERY REQUESTS.

1 I'M NOT GOING TO PRODUCE AN ENTIRE REPORT, WASTE
2 INFORMATION THAT IS COMPLETELY IRRELEVANT TO THIS CASE AND THAT
3 IS INVOLVING COMMUNICATIONS WITH MY CLIENT AND HIS CLIENTS THAT
4 ARE RELATED TO HIS JOB.

5 AND WITH RESPECT TO CHARLIE FERRARA AND HIS
6 EXTRACTION REPORT, THERE ARE VERY, VERY INTIMATE COMMUNICATIONS
7 BETWEEN HIM AND HIS WIFE THAT ARE SIMPLY NOT RELEVANT AND
8 SIMPLY AN INVASION OF HER PRIVACY BECAUSE THERE ARE PHOTOS ON
9 THERE THAT INVOLVE HER.

10 WITH RESPECT TO SANG LEE, PLAINTIFFS KEEP BRINGING UP
11 THE ISSUE OF MR. LEE AND THE COMMUNICATIONS THAT HE HAS HAD
12 WITH MY CLIENTS. AND, FRANKLY, NONE OF THE OTHER DEFENDANTS I
13 DON'T BELIEVE HAVE PRODUCED ANY INFORMATION RELATING TO
14 COMMUNICATIONS THEY'VE HAD WITH MY CLIENTS IN THIS CASE. AND
15 BOTH MY CLIENTS AND SANG LEE HAVE TESTIFIED TO THE FACT THAT
16 THESE COMMUNICATIONS ARE SIMPLY UNRELATED TO THIS CASE AND NOT
17 RESPONSIVE TO WHAT PLAINTIFFS ARE SEEKING.

18 THE COURT: I GUESS THE PROBLEM IS THAT IT SOUNDS
19 LIKE THEY'RE SHOWING UP ON A PRIVILEGE LOG.

20 MS. BACON: I DIDN'T PRODUCE THE PRIVILEGE LOG. I
21 UNDERSTAND THAT SANG LEE'S COUNSEL DID PRODUCE THE PRIVILEGE
22 LOG. AND I ALSO UNDERSTAND THAT NOW HE HAS PRODUCED THE ENTIRE
23 EXTRACTION REPORT, WHICH WOULD PRESUMABLY INCLUDE THOSE
24 COMMUNICATIONS BETWEEN MY CLIENTS AND SANG LEE.

25 AND IN FRANK FERRARA'S EXTRACTION REPORT I KNOW THAT

1 I INTENTIONALLY LEFT THAT PERIOD OPEN WHERE PLAINTIFFS HAVE
2 ALLEGED THAT THERE WERE COMMUNICATIONS BETWEEN SANG LEE AND MY
3 CLIENTS FOR THE PURPOSE OF SHOWING THEM THAT THERE ARE SIMPLY
4 NO COMMUNICATIONS THAT WERE RECOVERABLE IN MY CLIENT'S
5 EXTRACTION REPORT.

6 THE COURT: OKAY.

7 ALL RIGHT. SO, GOING IN THE ORDER THAT MS. WOLFF
8 LAID THINGS OUT, SO YOU'RE SAYING THAT THERE IS NO ASSERTION OF
9 PRIVILEGE. IT'S SIMPLY THAT WHAT YOU REDACTED IS NOT
10 RESPONSIVE.

11 IS THAT CORRECT, MS. BACON?

12 MS. BACON: PRECISELY. YES, YOUR HONOR.

13 THE COURT: OKAY.

14 AND, THEN, WITH RESPECT TO THE CELL PHONE BILL
15 PRODUCTION -- THE PRODUCTION OF CELL PHONE BILLS, IT SOUNDS
16 LIKE YOU'RE REPRESENTING THAT YOUR CLIENTS WOULD DECLARE THAT
17 THEY'VE UNDERTAKEN -- WHAT EFFORTS THEY'VE UNDERTAKEN TO OBTAIN
18 THE CELL PHONE RECORDS FOR THE REQUESTED PERIOD.

19 NOW, WHAT ABOUT -- I MEAN, IT SOUNDS LIKE THESE
20 REQUESTS WERE PROPOUNDED IN NOVEMBER. AND WHAT ABOUT
21 MS. WOLFF'S ARGUMENT THAT HAD THERE -- HAD THIS BEEN UNDERTAKEN
22 IN NOVEMBER, YOU WOULD HAVE HAD THE ADDITIONAL TIME GOING
23 BACKWARDS THAT WOULD HAVE BEEN RECOVERABLE.

24 DO YOU --

25 MS. BACON: I -- AS I SAID DURING THE LAST HEARING, I

1 WAS NOT INVOLVED IN THE CASE DURING THAT TIME. SO, I WAS
2 UNABLE TO MEET AND CONFER WITH MS. WOLFF DURING THAT PERIOD OF
3 TIME AFTER THE DISCOVERY RESPONSES WERE PRODUCED.

4 HOWEVER, I KNOW THAT AS SOON AS MS. WOLFF REACHED OUT
5 TO ME -- I BELIEVE IT WAS IN JUNE OF THIS YEAR -- TO FOLLOW UP
6 ON THE DISCOVERY REQUESTS, I IMMEDIATELY DISCUSSED THIS ISSUE
7 WITH MY CLIENTS. AND I KNOW THAT THEY BEGAN EFFORTS THEN.

8 I CAN -- I'M HAPPY TO SPEAK WITH THEM REGARDING
9 EFFORTS THAT THEY MADE PRIOR TO THAT, BUT I ONLY KNOW RIGHT NOW
10 OF THE SEVERAL OFFERS THAT THEY HAVE MADE SINCE I STARTED ON
11 THIS CASE.

12 THE COURT: SO, IN -- I MEAN, I RECOGNIZE THIS COULD
13 SKATE INTO A PRIVILEGED AREA, BUT AS YOU SIT HERE -- YOU KNOW,
14 AS WE TALK TODAY, YOU DON'T KNOW WHAT -- WHAT EFFORTS THEY TOOK
15 PRIOR TO YOUR COMING ON THE CASE?

16 MS. BACON: I CANNOT SPEAK TO THAT RIGHT NOW, NO,
17 YOUR HONOR.

18 THE COURT: OKAY.

19 I MEAN, THAT'S -- YOU CAN RECOGNIZE THAT THAT'S
20 FRUSTRATING.

21 MS. BACON: I UNDERSTAND. AND I KNOW THAT THE
22 PLAINTIFFS ARE TRYING TO MAKE THE ALLEGATION THAT THERE HAS
23 BEEN A SPOILIATION OF EVIDENCE. BUT MY CLIENTS WERE NOT SERVED
24 IN THIS CASE UNTIL, I BELIEVE, SOME TIME IN JULY AND DID NOT
25 SERVE THEIR ANSWER IN THIS CASE UNTIL SOME TIME IN SEPTEMBER.

1 AND I KNOW THAT THE RECORDS THAT HAVE BEEN PRODUCED
2 GO BACK TO THAT TIME FRAME. SO, THE EXTRACTION REPORTS DO
3 COVER THE PERIOD OF TIME MY CLIENTS HAVE BEEN INVOLVED IN THIS
4 CASE.

5 THE COURT: WELL, BUT I -- WHAT I -- AGAIN, I'M STILL
6 -- I'M STILL ON THE SECOND POINT ABOUT THE CELL PHONE BILLS.
7 IT SOUNDS LIKE AFTER THEY WERE SERVED, AFTER THEY ANSWERED,
8 DISCOVERY WAS PROPOUNDED ASKING FOR THESE CELL PHONE RECORDS,
9 WHICH CAN EVAPORATE, RIGHT? THE ONLY -- THERE'S A RETENTION
10 POLICY THAT THE PHONE COMPANIES HAVE. AND I STILL HAVEN'T
11 HEARD A GREAT ANSWER. AND I JUST DON'T THINK IT'S SATISFACTORY
12 TO SAY, I'M SORRY, THAT PREDATES MY INVOLVEMENT IN THE CASE.

13 I'M NOT SAYING THAT TO YOU. I'M NOT ADDRESSING THAT
14 TO YOU, MS. BACON. I MEAN, JUST MORE GENERALLY THAT THERE ARE
15 OBLIGATIONS HERE. AND IT SIMPLY CAN'T BE THAT PEOPLE CAN JUST
16 AVOID DISCOVERY REQUESTS BY SAYING, I'M SORRY. THAT PREDATES
17 ME. I DON'T KNOW WHEN -- I DON'T REALLY KNOW WHAT HAPPENED.
18 SO, THIS IS ALL I'M GIVING YOU.

19 SO, I GUESS WHEN I SAID FRUSTRATING, I THINK THERE
20 ARE A LOT OF OTHER WORDS THAT CAN BE USED. SO, I'M WONDERING
21 -- I KIND OF LIKE THE IDEA OF EXPLORING SOME MORE AS TO WHAT
22 STEPS WERE UNDERTAKEN. BECAUSE -- MAYBE IT'S THE CASE THAT THE
23 ATTORNEY NEVER COMMUNICATED IT TO YOUR CLIENTS THAT THEY WERE
24 SUPPOSED TO DO THIS.

25 BUT IT IS BAFFLING.

1 OKAY. THEN, MOVING ON TO THE THIRD POINT REGARDING
2 THE PRIVILEGE LOG. IT SOUNDS LIKE YOU'RE SAYING -- YOU'RE NOT
3 -- NUMBER ONE, YOU'RE NOT ASSERTING ANY PRIVILEGED
4 COMMUNICATIONS. EVERYTHING THAT YOU HAVE THAT YOU DEEM TO BE
5 RESPONSIVE TO THE REQUESTS HAS, IN FACT, BEEN PRODUCED. KIND
6 OF GOING BACK TO THE FIRST POINT.

7 AND, THEN, NOW WITH THE SECOND POINT, IT SOUNDS LIKE
8 FOR CHARLIE FERRARA'S EXTRACTION REPORT, THE REPORT IS
9 APPROXIMATELY 2,400 PAGES.

10 MS. BACON: NO, YOUR HONOR. FRANK'S REPORT IS
11 APPROXIMATELY 2,400 PAGES. CHARLIE FERRARA'S IS APPROXIMATELY
12 800 PAGES OR I BELIEVE 820 PAGES.

13 THE COURT: OH, OKAY.

14 MS. BACON: AND I'M PREPARED TO PRODUCE THAT TODAY TO
15 PLAINTIFF'S COUNSEL. I HAVE GONE THROUGH IT. I HAVE REDACTED
16 THE INFORMATION THAT IS NOT RESPONSIVE TO THE REQUEST. AND I'M
17 PREPARED TO PRODUCE THAT AT THE CONCLUSION OF THIS CALL.

18 THE COURT: YEAH, BUT I THOUGHT THAT YOU WERE ORDERED
19 TO PRODUCE THAT ON THE 17TH.

20 MS. BACON: I PRODUCED RESPONSIVE INFORMATION
21 PURSUANT TO THE COURT'S ORDER. I COULD NOT PRODUCE CHARLIE
22 FERRARA'S REPORT BECAUSE IT WAS SIMPLY NOT READY. AND THERE
23 WAS INFORMATION IN THERE THAT IS NOT RESPONSIVE TO THE REQUEST.
24 AS I SAID THERE ARE SEVERAL -- I MEAN, THE MAJORITY OF THE
25 REPORT ARE INCREDIBLY INTIMATE CONVERSATIONS THAT HE HAS HAD

1 WITH HIS WIFE, INCLUDING PHOTOS OF HER.

2 THE COURT: SO -- NO, I CAN APPRECIATE THAT. I JUST
3 -- OKAY. SO, I COULD BE MISTAKEN, BUT MY RECOLLECTION IS THAT
4 THERE WAS AN ORDER TO PRODUCE THIS INFORMATION ON MONDAY, JULY
5 17TH.

6 MS. BACON: THERE WAS AN ORDER TO PRODUCE RESPONSIVE
7 INFORMATION, WHICH IS PRECISELY WHAT I DID.

8 THE COURT: SO, THEN WHAT ARE YOU PRODUCING TODAY?

9 MS. BACON: THAT IS ADDITIONAL RESPONSIVE
10 INFORMATION.

11 THE COURT: OKAY. WHERE DID THAT COME FROM?

12 MS. BACON: FROM THE EXTRACTION REPORTS.

13 THE COURT: DID YOU HAVE THAT ON THE 17TH OR BEFORE?

14 MS. BACON: I BELIEVE -- I BELIEVE THE EXTRACTION
15 REPORT WE RECEIVED I THINK IT WAS THE SAME DAY. SO, THERE WAS
16 -- THERE WAS NO ABILITY TO GO THROUGH IT AND PRODUCE THE
17 RESPONSIVE INFORMATION.

18 THE COURT: SO -- YOU KNOW, I JUST -- I DON'T -- HELP
19 ME UNDERSTAND THIS. WHEN I LITIGATED, IF I HAD AN ORDER AFTER
20 A CONFERENCE DIRECTING ME TO PRODUCE SOMETHING, AND I COULD NOT
21 COMPLY WITH THAT ORDER, I WOULD RACE TO FILE SOMETHING WITH THE
22 COURT SAYING I AM NOT ABLE TO COMPLY WITH YOUR ORDER, YOUR
23 COURT ORDER.

24 MS. BACON: I PRODUCED RESPONSIVE INFORMATION
25 PURSUANT TO THE COURT'S ORDER. I DON'T RECALL THAT THE COURT'S

1 ORDER SAID I WAS REQUIRED TO PRODUCE ALL RESPONSIVE
2 INFORMATION.

3 (BRIEF PAUSE.)

4 MS. BACON: I UNDERSTAND. I UNDERSTAND, YOUR HONOR.
5 I PRODUCED RESPONSIVE INFORMATION ON THE DAY THAT IT WAS -- THE
6 ORDER TO BE PRODUCED.

7 THE COURT: YOU JUST CHOSE NOT TO PRODUCE ALL OF IT.

8 MS. BACON: THE INFORMATION THAT I WOULD HAVE
9 OTHERWISE PRODUCED WOULD NOT HAVE BEEN RESPONSIVE.

10 THE COURT: I DON'T -- YOU KNOW, THERE'S SO MANY
11 MOVING PARTS ON THIS CASE. AND I WANT TO MAKE SURE THAT I
12 TRACK EVERYTHING. BUT IT SOUNDS, MS. BACON, LIKE YOU'RE SAYING
13 YOU HAVE RESPONSIVE DOCUMENTS THAT YOU'RE GOING TO PRODUCE
14 AFTER THIS CONFERENCE CALL.

15 MS. BACON: YES. I DO HAVE RESPONSIVE INFORMATION
16 NOW THAT I'M ABLE TO PRODUCE.

17 THE COURT: OKAY.

18 WELL, YOU KNOW, I -- YOU KNOW, MAYBE IT'S JUST PEOPLE
19 HAVE DIFFERENT EXPERIENCES. BUT I DO THINK, MS. BACON, WHEN A
20 COURT SAYS TO PRODUCE RESPONSIVE INFORMATION, IT'S NOT
21 SATISFACTORY TO SAY YOU PRODUCED SOME RESPONSIVE AND THAT
22 YOU'RE GOING TO GET AROUND -- I'M NOT SAYING YOU'RE SAYING
23 THIS, BUT THEN YOU ARE ABLE TO THEN PRODUCE THE REMAINDER OF
24 THAT, THAT KIND OF -- WHEN YOU'RE READY OR WHEN YOU'VE HAD MORE
25 OPPORTUNITY TO REVIEW THE INFORMATION.

1 I THOUGHT IT WAS PRETTY CLEAR THAT -- FROM MS. WOLFF
2 AND MR. OTTEN THAT PART OF WHY THEY WERE BECOMING INCREASINGLY
3 CONCERNED WAS THE FILING OR THE ANTICIPATED FILINGS OF THE
4 SUMMARY JUDGMENT MOTIONS. AND I JUST DON'T UNDERSTAND HOW NOT
5 FILING SOME -- OR, EXCUSE ME, NOT PRODUCING SOME INFORMATION
6 AND THEN -- YOU KNOW, I DIDN'T WRITE DOWN EVERYTHING, BUT IT
7 SOUNDS LIKE MS. WOLFF IS CHARACTERIZING THE SUMMARY JUDGMENT
8 MOTION THAT YOU FILED IS SAYING THERE'S NO EVIDENCE, THAT THE
9 PLAINTIFFS --

10 MS. BACON: AND THE COMMUNICATIONS THAT WILL BE
11 PRODUCED IN THEIR ENTIRETY THAT ARE NOW DEEMED RELEVANT TO THIS
12 CASE BETWEEN THE PARTIES THAT THEY HAVE REQUESTED EVIDENCE THAT
13 FACT, THERE ARE NO COMMUNICATIONS RELATING TO THE ALLEGATIONS
14 MADE IN THIS CASE.

15 THE COURT: SO, YOU'RE SAYING THAT WHAT YOU'RE
16 PRODUCING LATER TODAY IS NOT RELEVANT?

17 MS. BACON: I'M SAYING IT'S RESPONSIVE IN TERMS OF
18 THE FACT THAT IT ASKED FOR COMMUNICATIONS RELATING TO THE
19 PARTICULAR INDIVIDUALS THAT THEY ASKED FOR IN THEIR REQUESTS.
20 AND THAT I'VE GONE THROUGH THIS LIST THAT WAS PRODUCED BY MR.
21 OTTEN WITH RESPECT TO THE ISSUE RELATING TO SANG LEE'S
22 DISCOVERY. AND I BELIEVE THAT ALL OF THE INDIVIDUALS THAT ARE
23 ON THIS LIST HAVE BEEN INCLUDED IN THAT EXTRACTION REPORT AND
24 HAVE NOT BEEN REDACTED.

25 THE COURT: AND THAT'S ALREADY IN THEIR POSSESSION?

1 MS. BACON: NO. THAT'S WHAT WILL BE PRODUCED TO THEM
2 TODAY.

3 THE COURT: MS. BACON, I JUST --

4 MS. BACON: BUT I DIDN'T HAVE THIS LIST -- I DIDN'T
5 HAVE THIS LIST UNTIL HE JUST PRODUCED IT THIS WEEK. AND THESE
6 INDIVIDUALS WERE NOT INCLUDED IN THE DISCOVERY REQUESTS THAT
7 WERE ORIGINALLY SERVED BY PLAINTIFFS.

8 THE COURT: ALL RIGHT.

9 MS. WOLFF, DO YOU WANT TO RESPONSE?

10 MS. WOLFF: SURE. THANK YOU, YOUR HONOR.

11 SO -- I GUESS I'M GOING TO -- I'M GOING TO TRY AND
12 ORGANIZE MY THOUGHTS, BUT I MIGHT END UP JUMPING AROUND A
13 LITTLE BIT.

14 BUT TO THE EXTENT THAT MS. BACON HAS SUGGESTED THAT
15 HER CLIENTS COULD DECLARE UNDER OATH WHAT EFFORTS THEY'VE
16 UNDERTAKEN, I'M NOT REALLY INTERESTED IN THAT BECAUSE, FOR
17 INSTANCE, CHARLIE FERRARA HAS ALREADY DECLARED UNDER OATH THAT
18 HE HASN'T REALLY TRIED THAT HARD. SO, I'M NOT REALLY SURE WHAT
19 A DECLARATION WHICH COULD PRESUMABLY CONTRADICT THIS TESTIMONY
20 WHAT THAT WOULD ADD.

21 AND I -- TO THE EXTENT THAT, YOU KNOW, THEY'VE
22 PRODUCED SOME RESPONSIVE INFORMATION AND THEN THE REST TODAY,
23 THAT'S REALLY -- THAT'S NOT SATISFACTORY TO ME EITHER BECAUSE,
24 YOU KNOW, NOW WE'RE BURDENED WITH DIGGING THROUGH ALL OF THIS
25 INFORMATION AND SIMULTANEOUSLY OPPOSING EIGHT SUMMARY JUDGMENT

1 MOTIONS WHEN, IN FACT, WE SHOULD HAVE HAD THIS A WEEK AND A
2 HALF AGO.

3 AND THE COURT DID JUST GRANT OUR REQUEST FOR A
4 SEVEN-DAY EXTENSION. BUT EVEN STILL, YOU KNOW, WE'RE
5 INCREDIBLY PRESSED FOR TIME HERE. THIS IS INFORMATION WE
6 SHOULD HAVE HAD IN DECEMBER. AND IT SHOULDN'T -- IT SHOULDN'T
7 FALL TO US, TO THE PLAINTIFFS, TO HAVE TO NOW BEAR THE BRUNT OF
8 THE DEFENDANTS' FAILURE TO -- FAILURE TO ADEQUATELY RESPOND TO
9 DISCOVERY OR TO DO THEIR DUE DILIGENCE.

10 AND TO MS. BACON'S COMMENT THAT THE EVIDENCE THAT
11 THEY'RE GOING TO BE PRODUCING TODAY IN HER OPINION WHILE IT'S
12 RESPONSIVE, IT STILL DOESN'T DEMONSTRATE EVIDENCE OF THEIR
13 WRONGDOING, I WOULD SAY THAT THE FACT THAT -- THAT THE EVIDENCE
14 -- THAT THE EVIDENCE IS NONEXISTENT DOESN'T MEAN THAT IT NEVER
15 EXISTED. AND IT SEEMS THAT THESE DEFENDANTS' FAILURE TO
16 ATTEMPT TO OBTAIN THEIR CELL PHONE BILLS SORT OF -- AND THE
17 LOSS OF THAT EVIDENCE AS A RESULT IS SIMILAR TO WHAT NOW EXISTS
18 ON THEIR CELL PHONES SINCE THESE CELL PHONES WERE JUST IMAGED A
19 WEEK AND A HALF AGO OR TWO WEEKS AGO AT MOST. THESE CELL
20 PHONES SHOULD HAVE BEEN IMAGED WHEN THE LAWSUIT WAS FILED BACK
21 IN MARCH. AND THERE'S I THINK A VERY LEGITIMATE CONCERN ON
22 THE PLAINTIFFS' BEHALF THAT NOW A SIGNIFICANT AMOUNT OF
23 EVIDENCE HAS EITHER BEEN DELETED OR -- WHETHER INTENTIONALLY OR
24 NEGLIGENTLY.

25 AND TO THE EXTENT THAT MS. BACON HAS STATED THAT

1 FRANK FERRARA'S IMAGING REPORT DOESN'T SHOW THOSE TEXTS THAT HE
2 HAD WITH SANG LEE SHE -- I THINK HER EXACT WORDS WERE THAT
3 THESE -- THERE WAS NO COMMUNICATIONS THAT WERE RECOVERABLE.
4 THAT DOESN'T MEAN THAT THEY NEVER EXISTED. IT JUST MEANS THAT
5 THEY'RE NOT THERE NOW.

6 AND, YOU KNOW, THERE'S A SIGNIFICANT PREJUDICE TO US
7 IN THE HIDING OF THIS EVIDENCE, THE DESTRUCTION OF THIS
8 EVIDENCE. AND I'M NOT GOING TO SAY THAT IT WAS INTENTIONAL. I
9 DON'T KNOW THAT. I JUST KNOW THAT IT OCCURRED. SINCE IT'S
10 CLEAR THAT SANG LEE THOUGHT THAT THESE WERE RESPONSIVE SINCE
11 THEY WERE INCLUDED ON A PRIVILEGE LOG, BUT, YET, NOW NO ONE CAN
12 SEEM TO FIND THEM.

13 AND, SO, YOU KNOW, I'M NOT REALLY SURE WHAT MORE WE
14 CAN DO HERE. IT SEEMS THAT THERE WAS NO EFFORT ON THESE
15 DEFENDANTS' PART TO REALLY MAKE ANY EFFORT TO COMPLY WITH
16 DISCOVERY. AND THE FACT THAT NOW THEY'RE TRYING TO DO IT AT
17 THE SAME TIME AS FILING A MOTION FOR SUMMARY JUDGMENT THEY'RE
18 GOING TO NOW PRODUCE EVIDENCE IT'S JUST -- IT'S NOT -- IT'S NOT
19 APPROPRIATE. IT'S NOT PROPER. AND IT'S INCREDIBLY
20 PREJUDICIAL.

21 THE LAST POINT I WOULD MAKE IS THAT WHILE THEY WERE
22 NOT SERVED IN THIS CASE UNTIL JULY, THEY WERE AWARE OF IT AT
23 THE TIME IT WAS FILED IN MARCH. THEY'VE MADE COMMENTS TO THE
24 PRESS AT THE TIME. AND I BELIEVE THERE'S A TEXT MESSAGE THAT
25 WAS PRODUCED BY I THINK ALAN JOHNSTON THAT INCLUDED CHARLIE

1 FERRARA AND IT REFERENCED THE FACT THAT THE LAWSUIT HAD BEEN
2 FILED.

3 SO, TO SAY THAT THEY WEREN'T SERVED OR APPEARED IN
4 THIS CASE UNTIL THE FALL, IT DOESN'T MATTER. THEY WERE AWARE
5 OF THE CASE BACK IN MARCH.

6 THE COURT: ALL RIGHT.

7 MS. WOLFF, WHAT ARE YOU -- WHAT ARE YOU ASKING FOR,
8 OR WHAT REMEDIES ARE YOU SEEKING?

9 MS. WOLFF: WELL, I THINK THAT -- I THINK AN ADVERSE
10 INFERENCE INSTRUCTION WOULD BE APPROPRIATE, THAT CHARLIE AND
11 FRANK FERRARA WERE INVOLVED IN THIS CONSPIRACY THAT WE'VE
12 ALLEGED TO COMMIT THE ACTS AND THE VIOLATIONS THAT ARE ALLEGED
13 IN THE COMPLAINT. PERHAPS EVEN STRIKING THEIR SUMMARY JUDGMENT
14 MOTIONS, WHICH ARE ENTIRELY BASED ON THEIR PREMISE THAT THERE'S
15 NO EVIDENCE TO SUPPORT PLAINTIFFS' CLAIMS. AND PERHAPS EVEN
16 SANCTIONS FOR THE REIMBURSEMENT OF OUR TIME AND HAVING TO DEAL
17 WITH THIS DISPUTE ON AN ONGOING BASIS.

18 THE COURT: I THINK WITH RESPECT TO THE ADVERSE
19 INFERENCE AND THE STRIKING OF THE SUMMARY JUDGMENT MOTIONS,
20 THOSE ARE MATTERS THAT YOU HAVE TO TAKE BEFORE JUDGE -- THE
21 DISTRICT JUDGE, JUDGE OTERO.

22 MS. WOLFF: OKAY.

23 THE COURT: I THINK IF YOU ARE ASKING FOR SANCTIONS
24 WITH RESPECT TO YOUR TIME, MY PROPOSAL -- BECAUSE IT SOUNDS
25 LIKE MS. BACON IS GOING TO BE PRODUCING THE REMAINDER OR

1 ADDITIONAL INFORMATION LATER TODAY. I GUESS MY PROPOSAL IS TO
2 SET THIS FOR A SANCTIONS MOTION. AND LET ME JUST SEE WHEN WE
3 CAN DO THAT.

4 NEXT WEEK, AGAIN, IS DIFFICULT. WE COULD DO IT I
5 SUPPOSE -- WE COULD TRY FOR THE -- WE COULD TRY FOR THE SECOND
6 WEEK OF AUGUST. AND THAT MIGHT LET YOU CLEAR -- GET YOUR
7 RESPONSES TO THE SUMMARY JUDGMENT MOTIONS ON FILE AND THEN TURN
8 YOUR ATTENTION TO THIS.

9 MS. WOLFF: SURE, YOUR HONOR. EVEN PERHAPS EITHER
10 THE END OF THE SECOND WEEK OF AUGUST OR THE THIRD WEEK OF
11 AUGUST.

12 THE COURT: OKAY.

13 MS. WOLFF: JUST BECAUSE, YOU KNOW, LIKE YOU'VE SAID,
14 WE'VE GOT ALL THESE OPPOSITIONS ARE DUE ON THE 7TH.

15 THE COURT: OKAY.

16 HOW ABOUT -- I LIKE THE -- I LIKE THE THIRD WEEK OF
17 AUGUST.

18 MS. WOLFF: OKAY.

19 THE COURT: AND, SO, WE CAN -- I TYPICALLY HEAR THE
20 MOTIONS ON WEDNESDAYS. SO, WE COULD DO IT ON THE 16TH.

21 MS. WOLFF: OKAY.

22 THE COURT: AT 10:00 A.M.

23 AND THEN WHAT I'LL DO IS JUST ISSUE A MINUTE ORDER
24 SETTING THE BRIEFING SCHEDULE MAYBE JUST FOR THE WEEK BEFORE
25 FOR THE PARTIES TO FILE. AND I'LL TRY -- I'LL TRY TO MAKE --

1 GIVE CLEAR DIRECTION IN THE MINUTE ORDER AS TO WHAT THE -- WHAT
2 THE COURT IS GOING TO DISCUSS.

3 IT SOUNDS LIKE, MS. WOLFF, WHAT YOU'RE ASKING --
4 SAYING ORALLY HERE IS THAT YOU WANT FEES AND COSTS FOR THE TIME
5 THAT YOU'VE SPENT TO -- WITH RESPECT TO OBTAINING THIS
6 DISCOVERY AS IT PERTAINS TO CHARLIE AND FRANK FERRARA.

7 MS. WOLFF: THAT'S CORRECT, YOUR HONOR.

8 AND WITH RESPECT TO THE TIMING OF WHAT -- OF ANY
9 WRITTEN SUBMISSIONS, I'M WONDERING IF MAYBE WE EVEN SET IT OUT
10 THE FOLLOWING WEEK BECAUSE --

11 THE COURT: SURE.

12 MS. WOLFF: -- IF WE'RE DONE FILING SUMMARY JUDGMENT
13 --

14 THE COURT: OKAY.

15 MS. WOLFF: -- MATTERS ON THE 7TH, I'M NOT SURE HOW
16 QUICKLY WE COULD TURN AROUND A BRIEF ON THIS ISSUE --

17 THE COURT: SURE.

18 MS. WOLFF: -- IF IT WAS DUE MAYBE EVEN THE 9TH. I
19 DON'T KNOW IF THAT WOULD GIVE US ENOUGH TIME.

20 THE COURT: SURE. SO, WE CAN EITHER DO THE HEARING
21 ON THE 23RD OR THE 30TH AND THEN WORK BACK FROM THERE.

22 MS. WOLFF: OKAY.

23 THE COURT: SO, DO YOU --

24 MS. WOLFF: SO I'M NOT SURE --

25 THE COURT: MAYBE --

1 MS. WOLFF: -- HOW MUCH TIME -- LEAD TIME YOU'D LIKE
2 FOR THOSE SUBMISSIONS.

3 THE COURT: WELL, IT'S ALWAYS -- IT'S ALWAYS NICE TO
4 HAVE A WEEK.

5 MS. WOLFF: I'M SURE.

6 (LAUGHTER.)

7 THE COURT: MS. BACON, WHAT IS YOUR SCHEDULE? -- IF
8 YOU'RE LOOKING AT EITHER THE 23RD OR THE 30TH AND THEN WORKING
9 BACK FROM THERE IN TERMS OF FILING SOMETHING.

10 DO YOU HAVE A --

11 MS. BACON: I'M --

12 THE COURT: -- PREFERENCE?

13 MS. BACON: I'M AVAILABLE FOR THE HEARING ON EITHER
14 THE 23RD AND THE 30TH.

15 THE COURT: OKAY.

16 MS. BACON: I --

17 THE COURT: ARE YOU -- ARE YOU THEN --

18 MS. BACON: I CAN WORK WITH MY SCHEDULE IN TERMS OF
19 --

20 THE COURT: OKAY.

21 MS. BACON: -- DOING THE BRIEFING.

22 THE COURT: OKAY. OKAY.

23 MR. OTTEN: YOUR HONOR, THIS IS VIC OTTEN.

24 I DON'T MEAN TO INTERRUPT US PICKING DATES, BUT I
25 WOULD LIKE TO THROW ONE IDEA OUT THERE AS WE SET HEARING DATES.

1 I -- WHAT I'M SEEING IN MY -- IN WHAT LITTLE HAS BEEN
2 PROVIDED TO ME CLEARLY IS EVIDENCE BEING DESTROYED. AND, SO,
3 WHAT I WOULD LIKE TO DO IN ADDITION TO WHAT MY CO-COUNSEL IS
4 DOING IS I THINK I'D LIKE TO SET A MOTION TO COMPEL WITH
5 RESPECT TO LEE'S RESPONSES AND PERHAPS BRANT BLAKEMAN'S.

6 AND THEN THE COURT COULD HEAR THE ARGUMENTS WITH
7 RESPECT TO PRIVILEGES OR WHATEVER, MAKE THE FINDINGS OF FACT.
8 AND THEN WE COULD GO TO JUDGE OTERO WITH EVIDENTIARY SANCTIONS
9 OF A DIFFERENT NATURE.

10 BUT I'LL GIVE YOU A GREAT EXAMPLE. WHAT WAS TURNED
11 OVER TO ME IN AN EXTRACTION REPORT THE OTHER DAY, IT DOESN'T
12 CONTAIN SOME THINGS THAT IT SHOULD. BUT WHAT IS CLEAR IS ON
13 THE 29TH OF JANUARY EVERY CALL THAT WAS MADE TO OR FROM SANG
14 LEE AND BRANT BLAKEMAN WAS -- BLAKEMAN WAS DESTROYED. AND IF
15 THE COURT -- OR DELETED.

16 AND IF THE COURT RECALLS, THAT THAT'S A VERY
17 SIGNIFICANT DATE. IT'S A DATE THAT MY CLIENT THAT IS A POLICE
18 OFFICER GOT INTENTIONALLY RUN OVER BY A SURFBOARD. AND WE
19 DON'T KNOW WHO DID IT. BUT BLAKEMAN WAS OUT THERE AND SAYS HE
20 CAN'T REMEMBER WHO WAS OUT BECAUSE -- WHICH IS HARD TO IMAGINE
21 WHEN THERE'S ONLY FIVE SURFERS IN THE WATER.

22 IT'S ALSO THE DAY THAT DAVID MELLOW WAS HANGING OUT
23 WITH SANG LEE ON THE PORCH. WE KNOW THAT BECAUSE THERE'S AN
24 INDEPENDENT WITNESS THAT SAYS SANG LEE Poured A BEER ON HIS
25 HEAD. AND THEN IT'S THE DAY DAVID MELLOW GOT ARRESTED.

1 AND IT JUST -- IT'S JUST MORE THAN A COINCIDENCE THAT
2 ON THAT DAY EVERY MESSAGE ON THIS CALL LOG BETWEEN BRAD
3 BLAKEMAN -- WHO SAID IN HIS DEPOSITION, BY THE WAY, THAT HE
4 RARELY EVER TEXTS -- USED -- EVER TEXTED PEOPLE -- EVERY ONE OF
5 THOSE IS DELETED.

6 AND THEN WHAT WE WERE GIVEN IN THIS EXTRACTION
7 REPORTS THAT YOUR HONOR JUST ORDERED INDICATES THAT THERE WERE
8 HUNDREDS -- I DON'T KNOW IF HUNDREDS IS THE WORD BUT NUMEROUS
9 TEXT MESSAGES THAT WERE NOT DELETED. AND WE HAVE NOT BEEN
10 GIVEN THOSE.

11 WE HAVE -- AND I'VE SAID THIS FROM DAY ONE -- AND I
12 KNOW THAT WHAT MAYBE THE COURT THOUGHT WAS IT WAS TOO EARLY --
13 THAT THIS WAS GOING TO HAPPEN. BECAUSE IT WAS JUST OBVIOUS
14 WITH ALAN JOHNSTON, THIS COMPLETE DISRESPECT OF DISCOVERY OR
15 THE COURT, TO ME, THAT THIS WAS WHAT THESE GUYS WERE GOING TO
16 DO.

17 THEN WE SIT DOWN. AND WE SPEND THOUSANDS OF DOLLARS
18 IN DEPOSITIONS. AND YOU ASK THEM QUESTIONS SUCH AS DID YOU
19 HAVE ANY COMMUNICATIONS WITH ANY OF THESE PEOPLE SINCE FILING
20 THE LAWSUIT.

21 NO. OR I CAN'T REMEMBER.

22 BUT WHAT WE -- WHAT WE CAN SEE NOW VERY, VERY CLEARLY
23 WHEN YOU TRIANGULATE MESSAGES TO PEOPLE, THEY WERE IN --
24 THEY'RE DESTROYED. THEY'RE DELETED. AND THEY WERE DELETED
25 AFTER THIS CASE WAS FILED. WELL, WE DON'T KNOW WHEN BECAUSE

1 THE EXTRACTION REPORT CONVENIENTLY LEAVES OUT THE DATE THEY'RE
2 DELETED.

3 AND YOUR HONOR HAD ASKED COUNSEL FOR SANG LEE THE
4 OTHER DAY WHEN DID HE GIVE YOU THE PHONE OR SOMETHING TO THAT
5 EFFECT BECAUSE IT SEEMS LIKE THE COURT WAS GETTING THE SAME
6 FEELING THAT WE WERE.

7 SO, WHAT'S VERY -- I'D LIKE TO SET THIS UP SO I CAN
8 FILE THIS MOTION. WE CAN PRODUCE EVIDENCE. AND THIS COURT CAN
9 MAKE RULINGS, NOT JUST ON HOW MUCH MONEY THIS COST US, BUT THAT
10 CAN MAKE FINDINGS OF FACT BASICALLY -- WHEN DID THEY GET THE
11 PHONES, WHEN DID THEY GIVE THEM TO THEIR LAWYERS. BECAUSE IT'S
12 NOT FAIR FOR ALL OF THEM TO GET TOGETHER AND JUST CONVENIENTLY
13 FORGET ABOUT STUFF AND THEN GET AWAY WITH NOT GIVING US THE
14 INFORMATION.

15 AND, THEN, THAT'S ALL I'M GOING TO SAY BECAUSE -- BUT
16 IF WE SET A DATE -- LET'S SET A DATE THAT I CAN FILE MOTIONS IN
17 ADDITION TO THE MOTIONS FOR SANCTIONS THAT ARE GOING TO BE
18 BROUGHT. BECAUSE I AM GOING TO BRING THIS BEFORE JUDGE OTERO.
19 IT'S AS CLEAR AS DAY. EVIDENCE WAS DESTROYED INTENTIONALLY.

20 THE COURT: SO, I'M JUST LOOKING AT THE -- I'M TRYING
21 TO LOOK AT JUDGE OTERO'S ORDER HERE. AND I SEE THAT DISCOVERY
22 CUTOFF IS AUGUST 7TH. AND I DON'T KNOW IF JUDGE OTERO REQUIRES
23 THAT ALL MOTIONS -- ALL DISCOVERY MOTIONS BE FILED BEFORE THE
24 CLOSE OF DISCOVERY. AND, SO, THAT'S MY ONLY CONCERN THERE, MR.
25 OTTEN.

1 IT SOUNDS LIKE YOU -- THERE'S A LOT GOING ON IN THE
2 CASE THAT -- AND YOU HAVE THIS EXTENSION OF SEVEN DAYS. BUT I
3 THINK THAT'S GOING TO COINCIDE WITH THE CUTOFF OF DISCOVERY.
4 LET ME JUST --

5 MR. OTTEN: I MEAN --

6 THE COURT: I DON'T KNOW IF EITHER -- IF ANYONE KNOWS
7 HOW -- I'M JUST TRYING TO FIND HIS SCHEDULING ORDER, IF IT
8 GIVES ANY GUIDANCE.

9 (PAUSE IN PROCEEDINGS.)

10 MS. WOLFF: I'M TRYING TO FIND THAT AS WELL, YOUR
11 HONOR. I BELIEVE IT WAS -- THERE WAS ONE THAT WAS ISSUED ON
12 AUGUST 29TH, I THINK.

13 THE COURT: OKAY.

14 MS. WOLFF: AND THEN I THINK THERE WAS ONE ALSO
15 BEFORE THAT.

16 THE COURT: RIGHT. I SAW THE -- THE 29TH SETS THE
17 SCHEDULE, BUT SOMETIMES -- IT MIGHT BE ON THE WEBSITE.

18 MS. WOLFF: HMM.

19 THE COURT: OH, OKAY. LET'S SEE.

20 (PAUSE IN PROCEEDINGS.)

21 THE COURT: OKAY. LET ME SEE. LET'S SEE THE
22 INITIAL ORDER.

23 (PAUSE IN PROCEEDINGS.)

24 THE COURT: I'M LOOKING AT DOCKET NUMBER 9.

25 (PAUSE IN PROCEEDINGS.)

1 THE COURT: WELL, I'VE JUST GONE THROUGH IT.

2 I DON'T SEE ANY INDICATION -- ANY DIRECTION ABOUT
3 WHEN JUDGE OTERO WANTS THE DISCOVERY ORDER -- ANY MOTIONS
4 REGARDING DISCOVERY TO BE FILED.

5 BUT, MR. OTTEN, I DO THINK THAT YOU'RE GOING TO --
6 (PAUSE IN PROCEEDINGS.)

7 THE COURT: OKAY. SO, IT'S ON PAGE 9. IT LOOKS LIKE
8 PARAGRAPH 19(D). HE GIVES DIRECTION ABOUT THE -- HOW THE
9 DISCOVERY MOTION HAS TO GO BEFORE THE MAGISTRATE JUDGE, BUT
10 IT'S SILENT AS TO THE TIMING OF IT.

11 SO, I THINK THERE'S BEEN SOME DISCRETION THERE, MR.
12 OTTEN. BUT I DO THINK THAT YOU WOULD HAVE TO GET A MOTION ON
13 FILE BEFORE THE CUTOFF OF DISCOVERY. SO, I MEAN, THAT LEAVES
14 YOU -- THAT LEAVES YOU WITH ABOUT A WEEK -- A LITTLE BIT MORE
15 THAN A WEEK.

16 SO, I DON'T KNOW HOW YOU WANT TO PROCEED.

17 MR. OTTEN: WELL, MAYBE WHAT WE COULD DO IS JUST PLAN
18 ON HAVING IT HEARD ON THE SAME DAY AS THE OTHER ONE THAT YOU'RE
19 SCHEDULING. AND I'LL JUST GET ONE FILED OR I WON'T. BUT, YOU
20 KNOW, IF I DON'T, THEN -- THEN WE'LL HAVE TO FIGURE OUT ANOTHER
21 WAY TO TAKE IT UP.

22 BUT I MEAN WHAT'S VERY CLEAR IS EVERYBODY THAT WAS
23 INVOLVED IN THIS AS COMMUNICATIONS GOING BACK AND FORTH TO EACH
24 OTHER ON THE DAYS THAT BAD THINGS HAPPENED. AND THEY ALL
25 DELETED THE INFORMATION. SO, I THINK IT'S IMPORTANT, YOU KNOW,

1 TO TEE IT UP. BUT I GUESS IT'S IN MY HANDS TO SEE WHETHER I
2 CAN DO THAT IN A WEEK AND A HALF.

3 THE COURT: OKAY. OKAY. ALL RIGHT.

4 SO, I DON'T KNOW -- THINK THAT WE SET -- PICKED A
5 DATE. SO, THE 23RD OR THE 30TH. EITHER OF THOSE WORKS FOR ME.

6 MS. BACON, DO YOU HAVE A PREFERENCE?

7 MS. BACON: EITHER ONE WORKS FOR ME, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MS. WOLFF:

10 MS. WOLFF: I DON'T -- YEAH, EITHER ONE IS FINE.

11 THE COURT: ALL RIGHT. LET'S GO AHEAD AND PICK THE
12 23RD --

13 MS. WOLFF: OKAY.

14 THE COURT: -- AT 10:00 A.M.

15 ALL RIGHT. MS. BACON, ARE YOU -- WHERE ARE YOU
16 LOCATED IN LOS ANGELES? WHERE DO YOU WORK?

17 MS. BACON: MY OFFICE IS IN NEWPORT BEACH, YOUR
18 HONOR.

19 THE COURT: OKAY.

20 MS. WOLFF.

21 MS. WOLFF: I'M IN SAN FRANCISCO, BUT --

22 THE COURT: OH, OKAY.

23 MS. WOLFF: -- CERTAINLY IF YOU'D PREFER US TO BE
24 THERE IN PERSON, I CAN MAKE ARRANGEMENTS.

25 THE COURT: NO, NO. WE'LL JUST -- WE'LL DO IT

1 TELEPHONICALLY.

2 MS. WOLFF: OKAY.

3 THE COURT: OKAY.

4 ALL RIGHT. AND, SO, THEN WE'LL LAY OUT A BRIEFING
5 SCHEDULE IN THE MINUTE ORDER.

6 IS THERE ANYTHING ELSE, MS. WOLFF?

7 MS. WOLFF: NOT REALLY. I MEAN, I GUESS IT'S
8 PROBABLY THE SAME ISSUE. IT'S JUST THAT, YOU KNOW, I GREATLY
9 APPRECIATE THE COURT HEARING US ON THIS AND SETTING THIS
10 HEARING ON MONETARY SANCTIONS. BUT IT STILL LEAVES US IN THE
11 PREDICAMENT OF HOW DO WE RESPOND TO THE SUMMARY JUDGMENT MOTION
12 WHEN, YOU KNOW, THEY'VE BEEN WITHHOLDING EVIDENCE ALL ALONG
13 AND, YOU KNOW, APPARENTLY NOW PRODUCING SOMETHING TODAY WHEN IT
14 SHOULD HAVE BEEN PRODUCED TWO -- YOU KNOW, A WEEK AND A HALF
15 AGO.

16 SO -- AND I GUESS -- IT SOUNDS LIKE OUR BEST STEP IS
17 TO SEEK AN ADVERSE INFERENCE INSTRUCTION FROM JUDGE OTERO. BUT
18 I'M JUST, YOU KNOW, SORT OF WONDERING IF THERE'S ANYTHING --
19 ANY OTHER REMEDY THAT WE CAN OBTAIN FROM YOUR HONOR TO HELP
20 REMEDY THIS CURRENT SITUATION.

21 THE COURT: WELL, IT SOUNDS LIKE WITH RESPECT TO THE
22 IMMEDIATE ISSUE OF GETTING THE INFORMATION, MS. BACON IS
23 PRODUCING -- MAKING ANOTHER ROUND OF PRODUCTION TODAY.

24 IS THAT CORRECT, MS. BACON?

25 MS. BACON: YES, YOUR HONOR.

1 THE COURT: OKAY.
2 I DON'T SEE THAT THERE'S ANYTHING ELSE FOR ME --
3 MS. WOLFF: OKAY.
4 THE COURT: -- RIGHT NOW, MS. WOLFF, SO.
5 MS. WOLFF: OKAY.
6 THE COURT: OKAY?
7 MS. WOLFF: OKAY. THANK YOU.
8 THE COURT: ALL RIGHT.
9 ANYTHING ELSE FROM ANYONE ELSE BEFORE WE ADJOURN?
10 OKAY. ALL RIGHT.
11 THANK YOU, BOTH.
12 THANK YOU, EVERYONE.
13 MS. WOLFF: THANK YOU.
14 MR. OTTEN: THANK YOU.
15 (PROCEEDINGS CONCLUDED 3:45 P.M.)
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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ DOROTHY BABYKIN

7/30/17

FEDERALLY CERTIFIED TRANSCRIBER
DOROTHY BABYKIN

DATED